IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

WP(C).No. 16889 of 2005(I)

OPMV.1455/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TRIVANDRUM
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PETITIONER:

S. SUBHA, W/O. JAMANTHEESWARA DEV,
`AVITTOM', THIVILAKOM, VIZHINJAM
VENGANOOR P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.G.SUDHEER

RESPONDENTS:
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1. BABU, S/O. SREEDHARAN,
PADINJATTIL VEEDU, ATTIPRA,
KULATHOOR P.O., THIRUVANANTHAPURAM.

2. THE DIVISIONAL MANAGER,
NEW INDIA ASSURANCE CO.LTD.,
DIVISIONAL OFFICE, KOTTARATHIL BUILDINGS,
PALAYAM, THIRUVANANTHAPURAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.16889 of 2005

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Dated this the 4th day of October, 2007.

JUDGMENT

This Writ Petition is filed by the claimant in O.P.(MV) No.1455 of 1999 pending before the Motor Accidents Claims Tribunal, Thiruvananthapuram. The said application is one for damages sustained to the vehicle in a road accident. The Tribunal found that the accident took place on account of the negligence of the tempo van driver, the second respondent. But non-suited the petitioner on the ground that she has not proved that she is the owner, she has not produced documents to show that she has not claimed compensation from her insurer and lastly she has not proved the actual quantum of damages.

2. Learned counsel for the writ petitioner submitted that the Assistant Motor Vehicle Inspector's report itself would reveal that she is the owner of the vehicle and further that she is prepared to produce documents to convince about her ownership of the

vehicle. It is also contended by her that she has not claimed any compensation from the insurer of her vehicle for the reason that it was not a comprehensive policy. It is also contended that she had really incurred expenses for repairing the vehicle. The Tribunal had observed in paragraph 9 of the award that Ext.A4 report would show that the headlight assembly of the motor cycle was broken clutch liver bracket was broken rear view mirror broken right side petrol tank was bent, the front mudguard (fibre) was broken, right side battery cover (fibre) was broken and the crush guard was bent. It is also noted in the A.M.V.I.'s report that the petitioner is shown as the owner of the vehicle to show that there are some materials to establish and when there are no materials to contradict them the Tribunal should have considered the case in detail instead of attempting to dismiss the petition on technical ground.

3. Therefore, I set aside the order of the Tribunal in O.P. (MV) No.1455 of 1999 and remit back the same to the Tribunal with a direction to consider it fresh after affording an opportunity to the petitioner herein to produce documents regarding her ownership and also non-claim by her from her insurer. She may

also adduce positive evidence to show the actual damages sustained to the vehicle. The court below shall also give notice to the Insurance Company before the final disposal of the matter.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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